Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions | Housing Court Decisions Project

2024-01-08

109TH AFFORDABLE HOUSING LLC v. TAVERAS

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation
"109TH AFFORDABLE HOUSING LLC v. TAVERAS" (2024). *All Decisions*. 1239.
https://ir.lawnet.fordham.edu/housing_court_all/1239

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART F

109TH AFFORDABLE HOUSING LLC,

Petitioner,

-against-

MARIA TAVERAS; SIXTO TAVERAS,

Respondents.

Index No. 306739-23

DECISION/ORDER

Motion Seq. 2-3

HON KAREN MAY BACDAYAN, JHC

Novick Edelstein Pomerantz, PC (Marybeth Hotaling, Esq.), for the petitioner
The Legal Aid Society (Chandler Ann Hart-McGonigle, Esq.) for the named respondent Maria Taveras and the unnamed party Juan Taveras

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc Nos.: 14-47.

PROCEDURAL HISTORY AND BACKGROUND AND DISCUSSION

This is a nonpayment proceeding commenced by petitioner against Maria Taveras (hereinafter referred to either as Maria Taveras or "respondent") and Sixto Taveras in April 2023. The petition seeks $1,606.56 in rent arrears: $265.44 for September 2022 and $335.28 monthly from October 2022 through January 2023. (NYSCEF Doc No. 1, petition ¶ 6.) Juan Taveras, an unnamed party, filed an answer on April 21, 2023, and the case was first calendared for May 2, 2023. (NYSCEF Doc No. 4, answer of Juan Taveras.) Mr. Taveras went through the Universal Access to Counsel ("UAC") screening process, and the Legal Aid Society ("LAS") filed a notice of appearance on his behalf on June 5, 2023. As the parties anticipated motion practice, the court set forth a briefing schedule on July 25, 2023, and adjourned the proceeding to October 13, 2023. Respondent filed a motion seeking leave to interpose an amended answer and grant summary judgment based on a defective rent demand, or alternatively to reduce the amount of alleged arrears owed due to an improperly credited rent reduction agreement. (NYSCEF Doc No. 8, notice of motion [sequence 1].)

After filing the motion, the parties stipulated to adjourn the proceeding to January 4, 2024; LAS represented that should Maria Taveras retain them, the pending motion would be withdrawn and LAS would refile the motion on Maria Taveras's behalf. (NYSCEF Doc No. 11, October 13, 2023 stipulation.) LAS subsequently filed a notice of appearance on behalf of Maria Taveras, a notice of withdrawal of the then-pending motion, and filed a motion on behalf of both respondents, seeking leave for Maria Taveras to file a late answer, for Juan Taveras to file an amended answer, and for summary judgment. (NYSCEF Doc No. 14, notice of motion [sequence 2].) Petitioner filed a cross-motion on December 15, 2023, seeking to join Juan Taveras as a respondent and amend all papers *nunc pro tunc* to include Juan Taveras as a respondent. (NYSCEF Doc No. 36, notice of motion [sequence 3].) Respondent filed reply papers and opposition to the cross-motion on December 29, 2023. (NYSCEF Doc No. 46, attorney's affirmation in reply and opposition.) The court heard oral arguments on January 4, 2024 and reserved decision.

Respondent's counsel argues Maria Taveras should be permitted to file a late answer, given that respondent is elderly, has no legal background, and was not aware of her defenses to this proceeding. (NYSCEF Doc No. 15, respondent's attorney's affirmation ¶¶ 35-37; NYSCEF Doc No. 16, Maria Taveras affidavit ¶¶ 3-4.) According to petitioner, due to a regulatory agreement between petitioner and HPD, respondent was to receive a $71.16 rent reduction; a letter addressed to Maria Taveras, dated November 23, 2020, states that the monthly rent of $778.64 would be reduced to $707.48 as of November 1, 2020, a $71.16 reduction. (NYSCEF Doc No. 20, respondent's exhibit C, November 23, 2020 letter from property management.) Respondent contends the rent demand is defective because it seeks a monthly rent in excess of the rent agreed upon by the parties in her leases. (NYSCEF Doc No. 15, respondent's attorney's affirmation ¶ 49.)

In support of the foregoing argument, respondent attaches two lease renewals: a two-year lease renewal from March 1, 2021 through February 28, 2023 at a legal regulated rent of $786.43, a lower rent of $714.55 ($71.88 less than the legal regulated rent), and a SCRIE reduced rent of $192.96; and another two-year lease renewal from March 1, 2023 through February 29, 2025 at a legal regulated rent of $825.75, a lower rent of $750.28, and SCRIE reduced rent of $264.84. (NYSCEF Doc No. 23, respondent's exhibit F, 2021-2023 lease renewal; NYSCEF Doc No. 26, respondent's exhibit H, 2023-2025 lease renewal.) Respondent

also attaches a December 2022 rent statement which shows respondent only owed $192.96 for December 2022 rent: the $786.43 monthly rent, minus a $71.88 "preferential rent credit" and a $521.59 SCRIE credit.[1] However, the rent statement for January 2023 charges $335.28 for the monthly rent and includes a balance forward of $2,277.12.[2] (NYSCEF Doc No. 28, respondent's exhibit J at 1-2.)

In opposition, petitioner disregards the rent to which the parties contracted in the fully executed lease renewals for March 2021-February 2023 and March 2023-February 2025. Rather, petitioner's managing agent avers that the lower amounts reflected in the leases were petitioner's "error" and that petitioner "incorrectly deducted [from the March 1, 2021 lease] the $71.16 rent reduction pursuant to the regulatory agreement twice to the SCRIE portion that respondent was required to pay; and in the other lease [commencing March 1, 2023] the amount of $71.16 was improperly deducted from SCRIE portion of $335.08."[3] (NYSCEF Doc No. 38, Jimenez affidavit ¶ 14.) Petitioner argues no proof has been presented as to why the $71.16 rent reduction resulting from petitioner's regulatory agreement with HPD should apply to respondent's $335.28 SCRIE rent and not solely to the legal regulated rent, and that the documents attached to the motion raise issues of fact that should preclude a finding of summary judgment. (NYSCEF Doc No. 37, petitioner's attorney's affirmation ¶ 60.) Petitioner also attaches a rent ledger, reflecting respondent has paid the original $335.28 SCRIE reduced rent from January 2023 through December 2023. (NYSCEF Doc No. 45, petitioner's exhibit G.)

In reply, respondent reiterates that the monthly amounts sought in the rent demand exceed the rent amount agreed to by the parties in the two lease renewals, and that petitioner has no "legal basis" to retroactively charge the mistakenly applied credits. (NYSCEF Doc No. 46, respondent's attorney's affirmation in reply and opposition ¶¶ 27, 30.) Respondent argues that she is actually entitled to a credit of $703.31. (*Id.* ¶ 32.)

For the following reasons, the court will first address Maria Taveras's motion to file a late answer for summary judgment first, and grants summary judgment in favor of the named respondent, Maria Taveras. Respondent's remaining arguments which, at first blush, are also meritorious, need not be considered.

---

[1] The parties do not explain why petitioner applied a $71.88 credit, more than the $71.16 rent reduction.
[2] The court notes that $2,277.12 is equal to the $71.16 rent reduction for 32 months (71.16 x 32 = 2,277.12).
[3] The correct amount of the resulting reduction is $70.44, less than the $71.16 credit ($335.28 - $70.44 = $264.84).

APPLICABLE LAW

A summary proceeding for nonpayment of rent may be maintained when "[t]he tenant has defaulted in the payment of rent, pursuant to *the agreement* under which the premises are held (emphasis added)[.]" (Real Property Actions and Proceedings Law [RPAPL] § 711 [2]; *Strand Hill Associates v Gassenbauer*, 41 Misc 3d 53 [App Term, 2nd Dept. 2013] ["a nonpayment proceeding can be maintained only where there is a landlord-tenant relationship between the parties, and must be predicated on an agreement to pay rent."]) A summary eviction proceeding alleging nonpayment of rent must be predicated upon a proper rent demand. (*Id.*) A petitioner's failure to serve a proper predicate notice necessitates dismissal of the proceeding as the rent demand is not amendable. (*Chinatown Apts. Inc. v Cho Chu Lam*, 51 NY2d 786 [1980].)

A party may request an extension of time to appear or plead in a proceeding upon just terms and conditioned upon showing a reasonable excuse for delaying or defaulting in the proceeding. (CPLR 2004, CPLR 3012 [d]). When a court has not entered a default order or judgment against the moving party, it must balance a number of factors when deciding whether to grant leave to file a late answer, including whether the party has raised meritorious defenses, the length of the delay in seeking to file a late answer, the excuse offered for the delay, whether there was willfulness by the moving party, and whether other parties to the proceeding will be prejudiced by permitting the filing of a late answer. (*See Emigrant Bank v Rosabianca*, 156 AD3d 468, 472 [1st Dept 2017].)

A court may employ the drastic remedy of summary judgment only where there is no doubt as to the absence of triable issues. (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974].) On such a motion, a court's function is to find, rather than to decide, issues of fact. (*Southbridge Towers, Inc. v Renda*, 21 Misc 3d 1138 [A], 2008 NY Slip Op 52418 [U] [Civ Ct, NY County 2008], citing *Epstein v Scally*, 99 AD2d 713 [1st Dept 1984].) The facts must be considered "in the light most favorable to the non-moving party." (*Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011].) Only upon a *prima facie* showing of entitlement to summary judgment, does the burden shift to the non-moving party to establish material issues of fact requiring a trial. (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012] [internal citations and quotation marks omitted].)

DISCUSSION

Here, the delays in this proceeding occurred initially due to a combination of the UAC intake process, and because of the elderly Maria Taveras's reliance on her son to manage her

affairs. Once LAS was able to retain Maria Taveras on November 6, 2023, respondents' attorney filed the instant motion to serve and file a late answer and for summary judgment on November 17, 2023. Petitioner has not asserted any discernable prejudice should respondent be permitted to file a late answer. While petitioner objects to the merits of the proposed defenses and counterclaims, "[a] showing of a potential meritorious defense is not an essential component of a motion to serve a late answer [] where, as here, no default order or judgment has been entered (internal citations omitted) . . . ." (*Jones v 414 Equities LLC*, 57 AD3d 65, 81 [1st Dept 2006]; *Artcorp Inc. v Citirich Realty Corp.*, 140 AD3d 417, 417-418 [1st Dept 2016] [it was not "essential" that defendant also showed a meritorious defense]; *Guzetti v City of New York*, 32 AD3d 234, 238 [1st Dept 2006, Sullivan and McGuire, J.J., concurring] ["[I]n the absence of a default order or judgment, an affidavit of merit is not an essential component of an application to compel acceptance of a late answer, but rather is one factor to be considered (internal citations omitted) [.]"]) Moreover, petitioner nowhere alleges any prejudice that would befall it from the interposition of the named respondent's late answer. Rather, petitioner focuses on the lack of prejudice that would inure to Juan Taveras were he to be added to the caption as a proper party. (NYSCEF Doc No. 36, Jimenez affidavit ¶¶ 9, 18.) Maria Taveras' motion to file a late answer is therefore granted, and the proposed late answer is deemed served and filed *nunc pro tunc*.

As issue has been joined, the court will now consider Maria Taveras's motion for summary judgment based on her first objection in point of law, to wit, that the predicate rent demand herein is defective. Respondent has proffered conclusive documentary evidence that petitioner does not have a cause of action for arrears accruing in the amount of $335.28 per month. Petitioner does not dispute the existence or authenticity of the March 1, 2021-February 28, 2023 lease in the amount of $192.96, or the March 1, 2023-February 28, 2025 lease in the amount of $264.94. Rather, petitioner cites only to "error" and acknowledges "incorrectly" and "improperly" offering respondent leases reflecting petitioner's unilateral mistakes. (NYSCEF Doc No. 38, Jimenez affidavit ¶ 14.)

Curiously, petitioner's attorney does not address petitioner's admission that the offered leases which respondent accepted were the result of a unilateral mistake. Instead, petitioner's attorney argues in a conclusory manner that the rent demand should be afforded a "liberal construction" and that the demand comprises only "minor inadequacies." (NYSCEF Doc No. 37, petitioner's attorney's affirmation in opposition ¶¶ 56-58.) However, petitioner more specifically

recites the factual underpinnings which establish petitioner's unilateral mistake. Petitioner's attorney further explicates the manner in which petitioner sought to rectify its mistake, to wit, correcting the ledger in order to hold respondent responsible for its own error. There is no argument that respondent, an unsophisticated, elderly, unrepresented (at the time) tenant, knew or should have known that the letter informing her of the HPD rent reduction, the rent bills, and the offered leases were the result of an excusable unilateral or mutual mistake and should not be considered "*the agreement*[*s*] under which the premises are held[.]" (RPAPL 711 [2].)

Petitioner has put the cart before the horse. The agreements herein upon which this proceeding is purportedly based -- valid, fully executed leases, admittedly based on petitioner's error -- cannot be disregarded unless and until the leases have been rescinded or reformed. There is no motion for reformation or recission of contract before the court.[4] Moreover, there is nothing in the record suggesting that petitioner would prevail on such a motion. A cause of action for reformation of contract, "must be based either on mutual mistake or fraudulently induced unilateral mistake . . . A claim for rescission of a contract must be predicated on the same grounds." (*Goldberg v Manufacturers Life Ins. Co.*, 242 AD2d 175, 179 [1st Dept 1998].) "Such mistake based on a party's own negligence . . . cannot serve as the basis for rescission or reformation." (*Id.* at 180.) In order for a court to rescind a contract on the basis of unilateral mistake, the moving party must establish, at a minimum, that (1) it entered into a contract under a mistake of material fact, and that (2) the other contracting party either knew or should have known that such mistake was being made. (*De Sole v Knoedler Gallery, LLC*, 137 F Supp 3d 387, 428 [SD NY 2015]; *see also 1225 Realty Owner LLC v Mocal Enterprises, Inc.*, 66 AD3d 602 [1st Dept 2009] [holding that a contract cannot be reformed on the basis of unilateral mistake absent a showing of fraud by the other party].)

By offering respondent a renewal lease which respondent executed and returned, petitioner created a binding lease agreement. Rent stabilized renewal lease offers are required to be binding. (Rent Stabilization Code [9 NYCRR] § 2523.5 [a]; *Matter of East 56th Plaza v New York City Conciliation & Appeals Board*, 56 NY2d 544, 546 [1982] ["The fact that the landlord

[4] *See Rosenblatt v. St. George Health and Racquetball Associates, LLC*, 119 AD3d 45 (1st Dept 2014) (the court cannot address a dispositive issue not raised by the parties).

may not have intended the proposed lease . . . to constitute a binding offer is immaterial because the statute requires that the offer be binding."])

CONCLUSION

Accordingly, it is

ORDERED that the branches of respondent's motion to grant Maria Taveras leave to interpose a late answer, and deem said late answer served and filed *nunc pro tunc* is GRANTED: and it is further

ORDERED that respondent's motion for summary judgment based on her first objection in point of law is GRANTED and the petition is dismissed; and it is further

ORDERED that the remaining branches of respondent's motion are DENIED as academic; and it is further

ORDERED that petitioner's cross-motion is DENIED as academic.

Respondent shall serve petitioner with notice of entry.

This constitutes the decision and order of this court.

Dated: January 8, 2024
New York, NY

So Ordered:
Hon. Karen May Bacdayan

HON. KAREN MAY BACDAYAN
Judge, Housing Part